

*Original*

WILLIAM L. BAILES, JR.  
SUITE 230, COAL BUILDING  
1130 SEVENTEENTH STREET, N.W.  
WASHINGTON, D. C. 20036

AREA CODE 202  
638-3041

April 11, 1979

H. G. Homme, Jr., Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

10274  
RECORDATION NO. .... Filed 1425

APR 11 1979 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

No. 9-161A211

Date APR 11 1979

Fee \$ 50.00

ICC Washington, D. C.

Dear Sir:

Attached is the original and enclosed are four additional executed copies of a security agreement, dated April 2, 1979, on railroad motive power between the following parties, and covering the equipment identified below:

Mortgagor: LaViers Enterprises  
c/o Harry LaViers, General Partner  
P. O. Box 332  
Irvine, Kentucky 40336

Mortgagee: Continental Illinois National Bank  
and Trust Company of Chicago  
231 South LaSalle Street  
Chicago, Illinois 60693  
Attention: Stanley C. Suboleski

Equipment Covered  
By The Agreement: Three (3) General Motors Model GP38-2  
2000 H. P. Diesel-Electric General Purpose  
Locomotives, in general accordance with  
General Motors Locomotive Specification 8090,  
A.A.R. Designation (B-B); Common designation  
(0440), bearing Serial Numbers 786237-1 to  
786237-3, inclusive, to be operated by Louisville  
& Nashville Railroad and bear Road Numbers  
3821 to 3823, inclusive. (Marks are SECX3821,  
SECX3822, SECX3823).

RECEIVED  
APR 11 1 36 PM '79  
I. C. C.  
FEE OPERATION BR.

I respectfully request that the original of this document be recorded in your files under the provisions of 49 USC 11303 (formerly Section 20c of the Interstate Commerce Act), and be retained for your file. I would also appreciate your receipting

*Charles J. ... Diane Jaques*

H. G. Homme, Jr.  
April 11, 1979  
Page 2

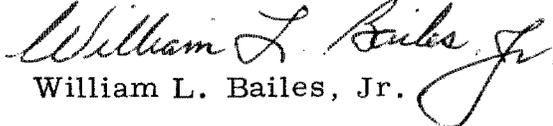
the four additional executed copies by both date stamp and letter, and returning them to me for transmittal to the parties signatory thereto.

A Cashiers Check in the amount of \$50.00 to cover payment of the required recordation fee is also enclosed.

I am an attorney, a registered ICC practitioner, and have been authorized by the parties involved to file this recordation on their behalf.

Thank you.

Yours very truly,

  
William L. Bailes, Jr.

WLBjr:doj

Enclosures

Interstate Commerce Commission  
Washington, D.C. 20423

4/11/79

OFFICE OF THE SECRETARY

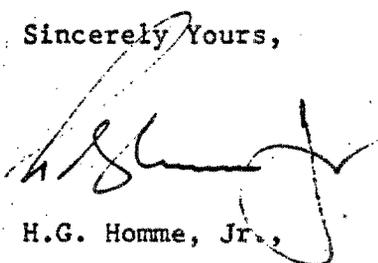
William L. Bailes, Jr.  
Suite 230, Coal Building  
1130 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 4/11/79 at 1:40pm and assigned recordation number(s) 10274

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

MORTGAGE AND SECURITY AGREEMENT

APR 11 1979 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

This Mortgage and Security Agreement made and entered into this 2nd day of April, 1979, by and between (i) LAVIERS ENTERPRISES, a Kentucky limited partnership, the general partner of which is Harry LaViers, Jr. ("LaViers Enterprises") and (ii) CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association with its principal office and place of business at 231 South LaSalle Street, Chicago, Illinois 60693 ("Bank").

## IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. For good and sufficient value received, LaViers Enterprises hereby pledges, mortgages, assigns, transfers and grants a security interest in the following collateral (the "Collateral") to the Bank, to-wit:

Three (3) General Motors Model GP38-2  
2000 H.P. Diesel-Electric General  
Purpose Locomotives, in general accord-  
ance with General Motors Locomotive  
Specification 8090, A.A.R. Designation  
(B-B), Common designation (0440), bearing  
Serial Numbers 786237-1 to 786237-3,  
inclusive, to be operated by Louisville  
& Nashville Railroad and bear Road  
Numbers 3821 to 3823, inclusive. (Marks are  
SECX3821, SECX3822, SECX3823)

2. This Mortgage and Security Agreement is made and given by LaViers Enterprises in order to afford security to the Bank for the payment in full by LaViers Enterprises and Harry LaViers, Jr., individually, of: (i) that promissory note (the "Note") of even date herewith from LaViers Enterprises and Harry LaViers, Jr., individually, to the Bank in the original face principal amount of One Million Six Hundred Forty-One Thousand Dollars (\$1,641,000.00), which Note bears interest at the rate of one percent (1%) per annum in excess of the "Prime Rate", as defined in the Note, charged by Bank from time to time in effect after the date of the Note, and (ii) all other indebtedness, obligations and liabilities of whatever kind of either of the makers thereof to the Bank, whether created directly or acquired by the Bank by assignment or otherwise, whether now existing or hereafter created or arising, absolute or contingent, joint or several, due or to become due, including but not limited to, all future loans and advances made by the Bank to either of the makers thereof.

3. LaViers Enterprises hereby warrants and represents to the Bank that:

(a) LaViers Enterprises is a duly organized and validly existing limited partnership, in good standing, under the laws of Kentucky and is duly qualified to transact business in all other jurisdictions where their business and applicable law so require.

(b) LaViers Enterprises is the sole and full owner of the Collateral and the Collateral is not subject to any other mortgages, security interests, liens or other encumbrances, other than ad valorem taxes not yet due and payable.

(c) LaViers Enterprises has the right and power to obtain and obligate itself on the loan represented by the Note and to enter into this Mortgage and Security Agreement, and the execution and delivery of the Note and this instrument do not violate any provision of the Agreement of Limited Partnership or the Certificate of Limited Partnership of LaViers Enterprises, or any term or condition of any contract or agreement to which LaViers Enterprises is a party.

(d) The acquisition of the Collateral, the loan evidenced by the Note and the execution and delivery of this instrument have all been duly and fully authorized by any and all necessary parties, and the Note and this instrument when duly executed and delivered will both constitute valid, binding and enforceable obligations of LaViers Enterprises, and the partner executing the Note and this instrument on behalf of LaViers Enterprises has been fully and properly authorized to do so.

4. LaViers Enterprises hereby covenants and agrees with the Bank that LaViers Enterprises will:

(a) Use the Collateral within the State of Kentucky, where the Collateral will be based and located for a preponderance of the time that the Note remains outstanding and this Mortgage and Security Agreement in effect.

(b) Defend and protect the Collateral against all adverse claims and demands, and promptly notify the Bank in writing of any such claim or demand asserted against any of the Collateral.

(c) Mark each locomotive forming part of the Collateral appropriately to show LaViers Enterprises' ownership and with its assigned reporting mark and number in accordance with the rules and regulations of the American Association of Railroads (A.A.R.), and LaViers Enterprises will maintain and cause the Collateral to be always so marked while this instrument remains in effect and will not, during such period, cause or allow the Collateral to be marked so as to

indicate ownership in any other party or to be renumbered without the prior written consent of the Bank, nor will LaViers Enterprises allow any of the Collateral to be marked so as to indicate a lien thereon allegedly held by any party other than Bank.

(d) Maintain the Collateral or cause the same to be maintained in good and proper working order throughout the period this instrument remains in effect, and the Collateral shall not be used for any purpose other than normal rail transportation of coal without the prior written consent of the Bank.

(e) Permit the Bank and its agents to inspect the Collateral and the books and records of LaViers Enterprises regarding same at any reasonable time, and from time to time, and will at all times keep track of the location of each piece of the Collateral and will promptly on request by the Bank furnish same a statement setting forth the location and condition of each locomotive forming part of the Collateral.

(f) Pay all taxes and other governmental assessments, charges and impositions levied upon the Collateral on or before the respective due dates therefor and prior to the attachment to the Collateral of any penalties or interest for late payment. The Bank shall have the right to demand proof of the timely payment of all such taxes and governmental charges and shall have the right, on the failure of LaViers Enterprises to so pay same, to pay all such taxes and governmental charges itself on behalf of LaViers Enterprises and LaViers Enterprises shall reimburse the Bank therefor, together with interest on the amounts so paid by the Bank at the rate of fifteen percent (15%) per annum, promptly upon demand by the Bank.

(g) Pay the Note, and all installments of principal and interest thereunder, and all other amounts owed by LaViers Enterprises to the Bank hereunder and otherwise, in full when, as and how due.

(h) Pay and reimburse the Bank for the expenses, including attorneys' fees, incurred in the preparation of this Mortgage and Security Agreement and other documents pertaining to this transaction, and for the cost of all recording and filing deemed necessary by Bank to perfect its lien on the Collateral.

(i) Promptly notify the Bank in writing in the event any of the locomotives forming the Collateral are substantially damaged or destroyed as a result of any accident, calamity or other occurrence, and will assign and pay to the Bank any compensation as a result of such damage or destruction

of the Collateral received under the American Association of Railroads Mechanical Interchange Rules, under any insurance policy or otherwise.

(j) Insure the Collateral, for the benefit of Bank (to whom loss shall be payable) in such amounts, in such companies, and against such risks as may be satisfactory to Bank in its sole discretion from time to time. If LaViers Enterprises fails to obtain such insurance, Bank shall have the right to obtain same at LaViers Enterprises' expense. LaViers Enterprises hereby assigns to Bank all rights to receive proceeds of such insurance not exceeding the unpaid balance of all liabilities and obligations of whatever kind of LaViers Enterprises to Bank, directs any insurer to pay all proceeds of such insurance directly to Bank, and authorizes Bank, as LaViers Enterprises' attorney-in-fact, to obtain such proceeds and to endorse and negotiate any draft for such proceeds, in LaViers Enterprises' name or otherwise. LaViers Enterprises shall deliver all of such insurance policies, or certificates thereof, to Bank, with the Bank named as an insured pursuant to a standard lender's endorsement and which shall provide that same may not be cancelled or modified except after thirty (30) days' prior written notice from the insurance company to Bank, and shall also deliver to Bank renewals thereof with proof of payment of premiums in advance for no less than a six (6) month period, at least ten (10) days before the expiration of each such policy.

5. LaViers Enterprises hereby covenants and agrees with the Bank that LaViers Enterprises will not:

(a) Permit any other chattel mortgages, security interests, liens or other encumbrances to attach to any of the Collateral;

(b) Permit any of the Collateral to be seized, attached or levied upon under any legal process;

(c) Sell, exchange, transfer or otherwise dispose of any of the Collateral, nor lease any of same to third parties, without the prior written consent of the Bank;

(d) Permit or suffer anything to be done, excluding normal use of the Collateral, that may in any way impair the value of any of the Collateral or the security intended to be afforded by this Mortgage and Security Agreement.

6. LaViers Enterprises shall not, while the Note remains outstanding and this Mortgage and Security Agreement remains in effect, dissolve or sell substantially all of its assets, without the prior written consent of the Bank, which shall not be arbitrarily withheld providing the Bank is

adequately assured and satisfied that its position with regard hereto will remain secure, it will receive full payment of the Note and all other amounts owed by LaViers Enterprises, and its lien on the Collateral will not be impaired.

7. (a) Each of the following shall constitute and be deemed an "Event and Default" hereunder:

(i) LaViers Enterprises and/or Harry LaViers, Jr., individually, shall fail to pay in full any installment of principal and/or interest, or any other amount, due under the Note at the time and in the manner due under the terms of the Note and shall further fail to cure such default within five (5) days of written notice thereof from the Bank;

(ii) LaViers Enterprises shall fail to comply fully with any of the provisions of this Mortgage and Security Agreement, or any of the warranties and representations made by LaViers Enterprises herein or in any other document pertaining to this financing and delivered to the Bank shall prove untrue or misleading, and such default is not cured to the satisfaction of the Bank within twenty (20) days of written notice thereof from the Bank to LaViers Enterprises;

(iii) LaViers Enterprises and/or Harry LaViers, Jr., individually, shall default under the terms of any other indebtedness owed by either of them to the Bank, or its successor as holder of the Note, whether now existing or hereafter arising or acquired; and

(iv) LaViers Enterprises and/or Harry LaViers, Jr., individually is adjudicated as bankrupt or insolvent, or files a voluntary petition in bankruptcy or a petition seeking reorganization or an arrangement with creditors, or requests or suffers the appointment of a trustee, receiver or liquidator for all or a substantial part of its business or assets, or makes a general assignment for the benefit of creditors, or takes advantage of any statute or law, Federal or state, pertaining to relief for debtors.

(b) Upon the occurrence of any Event of Default as defined in §7(a) above, the Bank may, at its option and without further notice, declare the entire unpaid principal balance of, and all accrued interest on, the Note, plus all other indebtedness and obligations of either or both of the makers thereof to the Bank, to be immediately due and payable in full and proceed to forthwith realize upon the Collateral and all other security for the Note and such indebtedness. On the occurrence of an Event of Default, the Bank shall

have all of the rights and remedies in and against the Collateral and otherwise available under Federal law and to a secured party under the Uniform Commercial Code as adopted in Illinois (or such other jurisdiction where any part of the Collateral may be located) and all other applicable laws, in addition to all rights and remedies provided herein and in the Note, all of which rights and remedies shall be cumulative to the fullest extent permitted by law. Following an Event of Default, the Bank shall have the right to require LaViers Enterprises, at the latter's expense, to assemble the Collateral and make it available to the Bank at such rail points as are feasible and designated by the Bank, and the Bank may immobilize and keep from use all or any part of the Collateral, with or without proceeding to sell the Collateral or any part thereof, and shall also have the right to lease all or part of the Collateral to other parties with or without taking possession thereof. The Bank shall have the right at its discretion to sell the Collateral at public or private sale(s) in one or more lots. LaViers Enterprises will on demand by the Bank pay, as part of the indebtedness and obligations hereby secured, all amounts, including but not limited to attorneys' fees, permitted by law, with interest on all such amounts paid by the Bank at the rate of fifteen percent (15%) per annum, incurred or paid by the Bank as expenses in taking possession of, preserving and disposing of the Collateral, including any taxes, insurance and maintenance costs incurred during such proceedings. The requirement of reasonable notice of time and place of disposition of the Collateral by the Bank shall be conclusively met if such Notice is mailed, postage prepaid, to LaViers Enterprises' last address as furnished to the Bank at least fifteen (15) days before the sale or disposition. The Bank may bid upon and purchase any or all of the Collateral at any public sale thereof. The Bank may dispose of all or any part of the Collateral in one or more lots and at one or more times and from time to time, and upon such terms and conditions, including a credit sale, as the Bank determines in its sole discretion. The Bank may apply the net proceeds of any such disposition of Collateral or part thereof, after deducting all costs incurred in connection therewith, including the Bank's attorneys' fees and expenses incidental to preparing for sale and sale of the Collateral, and with interest thereon at the rate specified above, in such order as the Bank may elect, to the indebtedness of LaViers Enterprises secured hereunder, including but not limited to the Note, and any remaining proceeds, after all such indebtedness and other amounts due hereunder are satisfied in full, shall be paid to LaViers Enterprises or other party legally entitled thereto.

8. This Mortgage and Security Agreement shall extend to and include, and LaViers Enterprises hereby grants the

Bank a security interest in, any proceeds and products of the Collateral and specifically in all per diem, mileage and other fees payable by third parties with regard to the Collateral and any rental or income derived from leasing any of the Collateral. At the request of the Bank, LaViers Enterprises will furnish the Bank complete information as to the foregoing items and the Bank shall have the right to require that all payments of such items be made directly to the Bank to be credited against the indebtedness hereby secured, and the Bank may advise the parties owing such payments of its rights under this instrument and direct such parties to make their payments to the Bank.

9. LaViers Enterprises consents to the filing of this Mortgage and Security Agreement with the Interstate Commerce Commission in order to perfect the Bank's lien on the Collateral under §20c of the Interstate Commerce Act and LaViers Enterprises also agrees to execute and deliver for filing to the Bank, at the latter's request, all financing statements deemed necessary by the Bank for perfecting a lien on the Collateral under the Uniform Commercial Code in Illinois and other jurisdictions. LaViers Enterprises shall pursuant to §4(h) hereof pay and reimburse the Bank for all fees and charges incurred or necessary for such filing and recording.

10. (a) Time shall be of the essence in the performance by LaViers Enterprises of all its covenants, obligations and agreements hereunder.

(b) This instrument and the agreement evidenced hereby shall, to the extent Federal law is not applicable, be governed by and construed in accordance with the law of the State of Illinois.

(c) This Mortgage and Security Agreement shall be binding upon LaViers Enterprises and its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns. The Bank, without the consent of LaViers Enterprises, may assign the Note and its rights under this Mortgage and Security Agreement, in which event the Bank's assignee shall succeed to all of the rights of the Bank under the Note and hereunder.

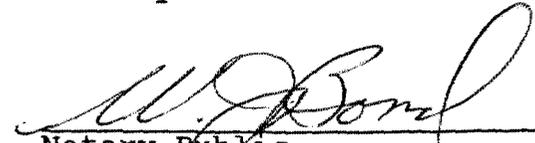
IN TESTIMONY WHEREOF, the parties hereto have each caused this Mortgage and Security Agreement to be duly executed on their behalf by their undersigned, properly authorized officers, this day and year first above set forth.

LAVIERS ENTERPRISES

By:   
Harry LaViers, Jr.  
General Partner

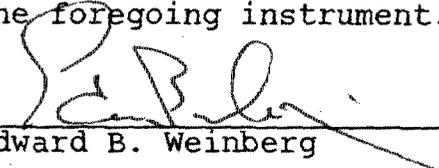


IN TESTIMONY WHEREOF, witness my hand and notarial seal.

  
Notary Public  
MY COMMISSION EXPIRES FEBRUARY 4, 1981

My commission expires: \_\_\_\_\_

I certify that I prepared the foregoing instrument.

  
Edward B. Weinberg

GREENEBAUM DOLL & McDONALD  
3300 First National Tower  
Louisville, Kentucky 40202



~~(b) All not impair the financial ability of the carrier to provide the service.~~

~~(3) An application or certificate must be made under oath and signed and filed for the carrier by a designated executive officer who knows the matters stated in the application or certificate. On receipt of an application of a carrier under this section, the Commission shall have a copy of the application served on the chief executive officer of each State in which that carrier operates. The appropriate authorities of those States are entitled to be admitted as parties to a proceeding under this section to represent the rights and interests of their people and States.~~

~~(e) The Commission shall require a carrier that issues securities, including notes, under this section to submit reports to it. The reports must identify the disposition of those securities and the application of the proceeds from their disposition.~~

~~(f) This section does not imply a guaranty or obligation of those securities by the United States Government. This section does not apply to securities issued or obligations or liabilities assumed by the United States Government, a State, or an instrumentality or political subdivision of one of them.~~

~~§ 11302. Issuance of securities and assumption of obligations and liabilities by motor carriers~~

~~(a) Except as provided in this section, section 11301 of this title applies to—~~

- ~~(1) motor carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 106 of this title;~~
- ~~(2) corporations organized to provide transportation as carriers subject to the jurisdiction of the Commission under that subchapter; and~~
- ~~(3) corporations authorized by the Commission to acquire control of at least one motor carrier subject to its jurisdiction under that subchapter.~~

~~(b) Section 11301 of this title does not apply when the total value of capital stock (or principal amount of other securities to be issued) and the value of capital stock and principal amount of other securities then outstanding is not more than \$1,000,000, or to notes of a maturity of not more than 2 years that aggregate not more than \$200,000. Notes that, with other outstanding notes of a maturity of not more than 2 years, aggregate that amount may be issued without regard to the percentage limitations applicable under section 11301 (b) (2) of this title. The value of capital stock having no par value is the fair market value on the date of issue of that stock, and the value of capital stock that has a par value is the fair market value on the date of issue or the par value, whichever is greater.~~

~~(c) This section does not apply to the United States Government, a State, or an instrumentality or political subdivision of one of them.~~

~~§ 11303. Equipment trusts: recordation; evidence of indebtedness~~

~~(a) A mortgage (other than a mortgage under the Ship Mortgage Act, 1920), lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of railroad cars, locomotives, or other rolling stock or vessels, intended for a use related to interstate commerce may be filed with the Interstate Commerce Commission. An assignment of a right or interest under one of those instruments and an amendment to that~~

*Respectfully Submitted*  
*John J. [Signature]*

instrument or assignment including a release, discharge, or satisfaction of any part of it may also be filed with the Commission. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Commission regulations. When filed under this section, that document is notice to, and enforceable against, all persons. A document filed under this section does not have to be filed, deposited, registered, or recorded under another law of the United States, a State (or its political subdivisions), or territory or possession of the United States, related to filing, deposit, registration, or recordation of those documents. This section does not change the Ship Mortgage Act, 1920.

(b) The Commission shall maintain a system for recording each document filed under subsection (a) of this section and mark each of them with a consecutive number and the date and hour of their recordation. The Commission shall maintain and keep open for public inspection an index of documents filed under that subsection. That index shall include the name and address of the principal debtors, trustees, guarantors, and other parties to those documents and may include other facts that will assist in determining the rights of the parties to those transactions.

§ 11304. Security interests in certain motor vehicles

(a) In this section—

(1) "motor vehicle" means a truck of rated capacity (gross vehicle weight) of at least 10,000 pounds, a highway tractor of rated capacity (gross combination weight) of at least 10,000 pounds, a property-carrying trailer or semitrailer with at least one load-carrying axle of at least 10,000 pounds, or a motor bus with a seating capacity of at least 10 individuals.

(2) "lien creditor" means a creditor having a lien on a motor vehicle and includes an assignee for benefit of creditors from the date of assignment, a trustee in bankruptcy, and a receiver in equity from the date of the petition in bankruptcy, and a receiver in equity from the date of appointment of the receiver.

(3) "security interest" means an interest (including an interest established by a conditional sales contract, mortgage, equipment trust, or other lien or title retention contract, or lease) in a motor vehicle when the interest secures payment or performance of an obligation.

(4) "perfection", as related to a security interest, means taking action (including public filings, recording, notation on a certificate of title, and possession of collateral by the secured party), or the existence of facts, required under law to make a security interest enforceable against general creditors and subsequent lien creditors of a debtor, but does not include compliance with requirements related only to the establishment of a valid security interest between the debtor and the secured party.

(b) A security interest in a motor vehicle owned by, or in the possession and use of, a carrier having a certificate or permit issued under section 10922 or 10923 of this title and owing payment or performance of an obligation secured by that security interest is perfected in all jurisdictions against all general, and subsequent lien, creditors of, and all persons taking a motor vehicle by sale (or taking or retaining a security interest in a motor vehicle) from, that carrier when—

(1) a certificate of title is issued for a motor vehicle under a law of a jurisdiction that requires or permits indication, on a

*Permanence*